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*Proposed Attorneys for the Debtor*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
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In re

MUNDO CLEANING SERVICES, INC.

Case No. 18-13368-mg

Chapter 11

Debtor.  
----- X

**DEBTOR’S MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING THE PAYMENT OF PRE-PETITION  
EMPLOYEE COMPENSATION OBLIGATIONS**

Mundo Cleaning Services, Inc. (the “Debtor”), by and through its attorneys Ortiz & Ortiz, L.L.P. (“O & O”), hereby moves (the “Motion”) for entry of an order authorizing the Debtor to pay its employees their unpaid wages and, to the extent applicable, directing the Debtor’s payroll bank, TD Bank, N.A., to honor any pending checks that are presented for any pre- petition employee wages. In support of the Motion, the Debtor respectfully states as follows:

**BACKGROUND**

1. The Debtor filed a voluntary petition on November 5, 2018 (the “Petition Date”). The Debtor continues to manage and operate its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. The United States Trustee has not appointed an official creditors’ committee in the Chapter 11 Case.

2. The Debtor operates a janitorial cleaning service in Manhattan. It filed its petition to address its tax obligations and reorganize its affairs. The Debtor has operated its business for over 10 years.

3. The Debtor has forty-one (41) employees (the “Employees”) that earned wages from October 29<sup>th</sup> through November 4<sup>th</sup> (the “Last Pay Period”) that have not been paid because of the Debtor’s bankruptcy filing. The Debtor’s president and sole shareholder, Manuel Remache, receives compensation of \$1,500.00 per pay period; he also did not receive compensation as a result of the bankruptcy filing. A redacted list of the Employees and estimated payments due for the Last Pay Period is attached as Exhibit A. None of the employees listed on Exhibit A is an insider of the Debtor, other than Mr. Remache.

4. The Employees perform a variety of crucial functions for the Debtor including, but not limited to, answering customer questions, booking appointments, processing customers’ bills, and performing cleaning services. The Employees’ valuable skill sets, familiarity with the Debtor’s services and customers are critical to the success of this case and the continued operation of the business.

**A. Debtor’s Employee Compensation Obligations**

5. In the ordinary course of business, the Employees are paid weekly, on every Monday. The Debtor’s gross weekly payroll typically ranges from \$16,000 to \$20,000.00. As set forth in Exhibit A, the approximate amount due for unpaid wages is approximately \$16,010.60, including Mr. Remache’s compensation (the “Pre-Petition Payroll”). As a result, the Debtor is hereby seeking authority to pay its Employees the Pre-Petition Payroll. The amount paid to each employee does not exceed the \$12,850.00 priority cap in Section 507(a)(4) of the

Bankruptcy Code.

**B. Gross Payroll Deductions, Taxes and Governmental Withholdings**

6. The Debtor is required by law to withhold from the Employees' wages amounts due for federal and state taxes, social security benefits, and Medicare taxes (the "Withholding Taxes"), and to remit the Withholding Taxes to the appropriate taxing authorities. Additionally, the Debtor must match from its own funds the social security and Medicare taxes, based on a percentage of gross payroll, additional amounts for state and federal unemployment insurance to remit to the taxing authorities (collectively, the "Employer Payroll Contribution" and, together with the Withholding Taxes, the "Payroll Taxes"). The Payroll Taxes for the Last Pay Period are approximately \$4,165.54 (the "Pre-Petition Payroll Taxes"). The Debtor believes it is current on its employee wage obligations, other than the Pre-Petition Payroll Taxes, and seeks authority to pay Pre-Petition Payroll Taxes that have accrued before the Petition Date when they become due.

**JURISDICTION**

7. The Court has jurisdiction over this motion. This is a core proceeding arising under 28 U.S.C. § 157(b)(2). Venue of this motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for relief include 11 U.S.C. §§ 105, 363, 364(b), 507(a)(5) and 541(d) of title 11 of the United States Code, 11 U.S.C. § 101, et. seq. (the "Bankruptcy Code").

**RELIEF REQUESTED**

8. The Pre-Petition Payroll and Pre-Petition Payroll Taxes constitute pre-petition obligations of the Debtor. The Debtor seeks an Order authorizing its payment of these obligations, and directing the Debtor's bank to honor payments for any Pre-Petition Payroll and

Pre-Petition Payroll Taxes (the “Pre-Petition Wage Obligations”) that may have not been tendered for payment to the bank.

9. The Debtor submits that the relief sought herein is authorized pursuant to, among other Section 363(b)(1) of the Bankruptcy Code. That section permits a debtor in possession to use, sell, or lease property out of the ordinary course of its business. However, since no section of the Bankruptcy Code specifically authorizes this relief, most courts also rely on their authority under Section 105 of the Bankruptcy Code to grant such relief. E.g., In re Ionosphere Clubs, Inc., 98 B.R. 174, 175-76 (Bankr. S.D.N.Y. 1989) (“The Court has the ability to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor and is commonly referred to as either the “doctrine of necessity” or the “necessity of payment” rule. This rule recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor.”)

10. The Court should find that the payment of Pre-Petition Payroll is absolutely necessary to maintain the Debtor’s operations and retain the uninterrupted service and loyalty of its employees. The Debtor operates a service business and can not function without the full commitment of its workforce. Moreover, the Debtor’s employees earn modest salaries and are very much dependent upon the income they receive from the Debtor. Application of the “necessity of payment” doctrine here supports the Debtor’s request to honor its Pre-Petition Payroll.

11. The Court should also find that payment of the Pre-Petition Payroll is in the best interests of the estate. The amount to be paid to any one employee for the pre-petition period

will not exceed \$12,850.00, the maximum amount allowed under Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. The Debtor has the ability to make these payments, and satisfying these obligations will not prejudice other creditors of bankruptcy estate since the Employees' wages are entitled to priority status. See 11 U.S.C. § 1129(a)(9)(B).

12. Payment of the Pre-Petition Payroll Taxes is also in the best interests of the Debtor and the estate. First, the payment of such taxes also will not prejudice other creditors as these claims hold priority claim status under Section 507(a)(8) of the Bankruptcy Code. See 11 U.S.C. § 1129(a)(9)(C). Second, the Debtor is legally obligated under state and federal law to ensure that the obligations are satisfied on a timely basis. In fact, the portion of the Payroll Taxes withheld from the Employees' wages are held in trust by Debtor and are not property of Debtor's estate under Section 541 of the Bankruptcy Code. See, e.g., Begier v. IRS, 496 U.S. 53 (1990). For these reasons, the Court should find that granting the relief requested herein is appropriate under these circumstances.

13. No previous request for the relief sought herein has been made by the Debtor to this Court or any other court.

**WHEREFORE**, the Debtor respectfully requests that the Court grant the relief requested herein and grant such other and further relief as is just.

Dated: Astoria, New York  
November 6, 2018

/s/Martha J. de Jesus  
Norma E. Ortiz, Esq.  
Martha J. de Jesus, Esq.  
Ortiz & Ortiz, L.L.P.  
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Astoria, New York 11103  
Tel. (718) 522-1117  
*Proposed Attorneys for the Debtor*

**EXHIBIT A**

Mundo Cleaning Services Inc.									
		Beginning Payroll Period:		10/29/2018		Ending Payroll Period:		11/4/2018	
First Name	Last Name	Employee's Position	Pay Type	Salary	30	Pay Rate	Standard Hours	Overtime Hours	Gross Salary
		Cleaning Crew	Hourly		40 00	\$13.00	40.0000	-	520.00
		Cleaning Crew	Hourly		30 00	\$ 13.00	30.0000	-	390.00
		Cleaning Crew	Hourly		40 00	\$ 13.00	40.0000	-	520.00
		Cleaning Crew	Hourly		0 00	\$ 13.00	-	-	-
		Cleaning Crew	Hourly		35 00	\$ 13.00	35.0000	-	455.00
		Cleaning Crew	Hourly		40 00	\$13.00	34.0000	-	442.00
		Cleaning Crew	Hourly		40 00	\$13.00	40.0000	-	520.00
		Cleaning Crew	Hourly		36 00	\$ 13.00	36.0000	-	468.00
		Cleaning Crew	Hourly		36 00	\$ 13.00	36.0000	-	468.00
		Cleaning Crew	Hourly		24 00	\$ 13.00	24.0000	-	312.00
		Cleaning Crew	Hourly		15 00	\$ 13.00	15.0000	-	195.00
		Cleaning Crew	Hourly		40 00	\$ 13.00	40.0000	-	520.00
		Cleaning Crew	Hourly		40 00	\$13.00	40.0000	-	520.00
		Cleaning Crew	Hourly		36 00	\$13.00	36.0000	-	468.00
		Cleaning Crew	Hourly		30 00	\$ 13.00	30.0000	-	390.00
		Cleaning Crew	Hourly		18 00	\$ 13.00	18.0000	-	234.00
		Cleaning Crew	Hourly		0 00	\$13.00	-	-	-
		Cleaning Crew	Hourly		24 00	\$ 13.00	24.0000	-	312.00
		Cleaning Crew	Hourly		35 20	\$ 13.00	35.2000	-	457.60
		Cleaning Crew	Hourly		40 00	\$ 13.00	40.0000	-	520.00
		Office Assistant	Hourly		25 00	\$13.00	25.0000	-	325.00
		Cleaning Crew	Hourly		24 00	\$ 13.00	24.0000	-	312.00
		Cleaning Crew	Hourly		30 00	\$ 13.00	30.0000	-	390.00
		Driver	Hourly		40 00	\$ 13.00	40.0000	-	520.00
		President	Salary	\$ 1,500.00		\$ -	-	-	1,500.00
		Cleaning Crew	Hourly		40 00	\$13.00	40.0000	-	520.00
		Cleaning Crew	Hourly		40 00	\$ 13.00	40.0000	-	520.00
		Cleaning Crew	Hourly		40 00	\$13.00	40.0000	-	520.00
		Cleaning Crew	Hourly		40 00	\$13.00	40.0000	-	520.00
		Cleaning Crew	Hourly		40 00	\$0.00	40.0000	-	520.00
		Cleaning Crew	Hourly		12 00	\$13.00	12.0000	-	156.00
		Cleaning Crew	Hourly		0 00	\$ 13.00	-	-	-
		Cleaning Crew	Hourly		18 00	\$ 13.00	18.0000	-	390.00
		Cleaning Crew	Hourly		6 00	\$13	6.0000	-	78.00
		Cleaning Crew	Hourly		40 00	\$13.00	40.0000	-	520.00
		Cleaning Crew	Hourly		40 00	\$ 13.00	40.0000	-	520.00
		Cleaning Crew	Hourly		40 00	\$13.00	40.0000	-	520.00
		Cleaning Crew	Hourly		36 00	\$ 13.00	36.0000	-	468.00
Total				\$ 1,500.00	1,110.20		1,104.20	-	\$ 16,010.60

## **PROPOSED ORDER**



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re

MUNDO CLEANING SERVICES, INC.

Case No. 18-13368

Chapter 11

Debtor.

----- x

**ORDER GRANTING DEBTOR’S MOTION  
FOR AN ORDER AUTHORIZING THE PAYMENT  
OF PRE-PETITION EMPLOYEE WAGE OBLIGATIONS**

Upon the Motion (“Motion”) of Mundo Cleaning Services, Inc. (the “Debtor”) dated November 5, 2018, for entry of an order authorizing Operator to pay Pre-Petition Employee Wage Obligations; no opposition to the Motion having been filed; the Debtor having appeared by its counsel Ortiz & Ortiz, L.L.P.; due notice of the Motion having been given and sufficient cause appearing therefore, it is

**ORDERED**, that the Debtor is authorized and empowered to satisfy in the ordinary course of business the Pre-Petition Employee Wage Obligations including, but not limited to, Pre-Petition Payroll as set forth on Exhibit A and related Pre-Petition Payroll Taxes, and subject to the limitations set forth in 11 U.S.C. §§ 507(a)(4) and 507(a)(5);

**ORDERED**, that any and all financial institutions honoring the aforementioned obligations to Debtor’s Employees are authorized and directed to receive, process, honor and pay all checks, drafts, and automatic clearing house and wire transfers drawn on bank accounts of the Debtor to the extent authorized herein or directed by the Debtor;

**ORDERED**, that the Debtor is hereby authorized, consistent with this Order, to issue

post- petition checks (or electronic fund transfers) in payment of pre-petition obligations to Debtor's Employees;

**ORDERED**, that no pre-petition obligations, other than the obligations set forth on Exhibit A and related Payroll Taxes, may be paid by the Debtor without further order of the Court.

Dated: New York, New York  
November \_\_, 2018

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HON. MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE

No Objection.

Office of the U.S. Trustee

/s/Paul Schwartzberg  
By: Paul Schwartzberg

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		Beginning Payroll Period:		10/29/2018		Ending Payroll Period:		11/4/2018	
First Name	Last Name	Employee's Position	Pay Type	Salary	30	Pay Rate	Standard Hours	Overtime Hours	Gross Salary
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Total				\$ 1,500.00	1,110.20		1,104.20	-	\$ 16,010.60